

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MICHAEL IRVING

Plaintiff,

CASE NUMBER: 06-11569  
HONORABLE VICTORIA A. ROBERTS

v.

T. KELLY, et al,

Defendants.

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ORDER

This matter is now before the Court on Plaintiff's motion for leave to appeal *in forma pauperis* and Plaintiff's motion for appointment of counsel on appeal.

**A. Motion to for Leave to Appeal *In Forma Pauperis***

Plaintiff, a pro se prisoner, requests to proceed on appeal *in forma pauperis*. This Court is authorized to grant Plaintiff's request for *in forma pauperis* status unless the Court finds that the appeal is not taken in good faith. An appellant's "good faith" is judged by an objective standard. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is not taken in good faith if the issue presented is frivolous. *Id.* Although this Court dismissed Plaintiff's claim for failure to exhaust administrative remedies, his appeal of this claim is not frivolous. "Good faith merely requires a showing that the issues are arguable on the merits; it does not require a showing of probable success." *Foster v. Ludwick*, 208 F.Supp.2d 750, 765 (E.D.Mich. 2002). Therefore, the Court finds that Plaintiff's claims are being brought in good faith and, therefore, his request to proceed *in forma pauperis* is **GRANTED**.

**B. Motion for Appointment of Counsel**

Plaintiff is appealing this Court's judgment dismissing his civil rights complaint filed under 42 U.S.C. § 1983. He requests appointment of appellate counsel. There is no right to counsel in prisoner civil rights cases. *Glover v. Johnson*, 75 F.3d 264, 268 (6th Cir.1996). And, appointment of counsel is a privilege – not a constitutional right – that is justified only by exceptional circumstances. *Lavado v. Keohane*, 992 F.2d 601, 605-606 (6th Cir.1993). Plaintiff's motion, however, is not properly before this Court. Plaintiff's pro se appeal is pending in the Sixth Circuit Court of Appeals. See *Irving v. Kelly, et al*, No. 07-1559. Thus, Plaintiff should address his request for appointment of counsel to that court. Accordingly, Plaintiff's motion is **DENIED**.

**IT IS SO ORDERED.**

S/Victoria A. Roberts  
Victoria A. Roberts  
United States District Judge

Dated: June 12, 2007

The undersigned certifies that a copy of this document was served on the attorneys of record and pro se plaintiff by electronic means or U.S. Mail on June 12, 2007.

S/Carol A. Pinegar  
Deputy Clerk